

United States
18
Circuit Court of Appeals
For the Ninth Circuit.

HARTLAND LAW, EUGENE D. N. E. LEHE, MEL-
VILLE W. LAWRENCE and H. O. COMSTOCK,
Copartners, Doing Business as LAWRENCE &
COMSTOCK, NELLIE COPLAND and JOHN DOE
COPLAND, Her Husband,
Plaintiffs in Error,
vs.

ARTHUR L. SMITH, Dam Gate-Keeper, A. P. DAVIS,
Chief Engineer and Director, F. G. HOUGH, Late
Project Superintendent, JOHN F. TRUESDELL,
Special Assistant to the Attorney General of the
United States Reclamation Service,
Defendants in Error.

Transcript of Record.

Upon Writs of Error to the Southern Division of the
United States District Court of the
Northern District of California,
Second Division.

FILED

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F. D. MONCKTON,
CLERK

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Circuit Court of Appeals

For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

JOHN E. BENNET, Esq., Russ Bldg., San Francisco, Calif., and F. W. SAWYER, Esq., Claus Spreckels Bldg., San Francisco, Calif.,
Attorneys for Plaintiffs.

JOHN T. WILLIAMS, U. S. Attorney, and E. M. LEONARD, Assistant U. S. Attorney, Post-office Bldg., San Francisco, Calif.,
Attorneys for Defendant, A. L. Smith.

In the Superior Court of the State of California
in and for the City and County of San Francisco.

HARTLAND LAW,

Plaintiff,

vs.

ARTHUR L. SMITH, Dam Gate-keeper, A. P. DAVIS, Chief Engineer and Director, F. G. HOUGH, Late Project Superintendent, JOHN F. TRUESDELL, Special Assistant to the Attorney General of the United States, all of the United States Reclamation Service, and Related to the Truckee-Carson Project of Said Service,

Defendants.

Complaint.

The plaintiffs sues the above-named defendants and each of them, they and each of them being in the service of the United States, in the Reclama-

tion Service thereof, and at all times herein mentioned in active operation of the Truckee-Carson project in the State of California, and for cause of action says:

I.

That heretofore, to wit, on or about the 30th day of June, 1916, plaintiff was the owner and in the possession of all that tract of land lying and being in the State of California and in the County of El Dorado and described as follows:

A strip of land of uniform depth on the west shore of Emerald Bay, commencing at a point of rock known as Maiden's rock on the west shore of Emerald Bay and extending northeasterly along shore line of said Emerald Bay, three hundred feet with a uniform depth back from said shore line sufficient to contain two acres of land, being a part of lot 1 Section 21, Tsp. 13 N., R. 17 E., M. D. B. & M., County of Eldorado, State of California, with improvements thereon.

II.

That on or about said date defendants and each of them were in possession of and were operating a certain dam at the mouth of Lake Tahoe, in the State of California, which dam was provided with gates capable of controlling the waters and levels of said lake. [1*] That the defendants then and there shut down said gates, and thereby caused the surface of said lake to raise to a great height, to wit: 6229.80 feet above sea level, as a result of

*Page-number appearing at foot of page or original certified Transcript of Record.

which raise of the lake surface the structures and improvements of plaintiff upon his land were by the action of the waters of said lake washed out and otherwise greatly damaged. The waters of the said lake were by said acts of defendants and each of them raised upon the lands of the plaintiff, and so overflowing did kill and destroy trees and shrubbery thereupon, did wash from said lands soil, and did wreck and demolish structures upon said lands, and did make the dwelling upon said land uninhabitable, and the several structures and excavations thereon unusable, all to the damage of plaintiff in the sum of five thousand dollars.

WHEREFORE plaintiff demands judgment against defendants and each of them in the sum of five thousand dollars.

JOHN E. BENNETT,
F. W. SAWYER,
Attorneys for Plaintiff.

State of California,
City and County of San Francisco.

John E. Bennett, being duly sworn, deposes and says: That he is attorney for the plaintiff in the above-entitled case, that he has read the foregoing complaint and knows the contents thereof and the same is true, except as to the matters which are therein stated on information or belief, and as to those matters he believes it to be true.

That the reason this verification is not made by the plaintiff is because the said plaintiff is not in the city and county of San Francisco, which is where affiant has his office.

JOHN E. BENNETT,

Subscribed and sworn to this — day of June, 1919.

Notary Public of the State of California, in and for the City and County of San Francisco. [2]

[Endorsed]: No. 98,538. In the Superior Court of the State of California in and for the City and County of San Francisco. Hartland Law, Plaintiff, vs. Arthur L. Smith et als., Defendants. Complaint—Damages to Property. Filed Jun. 24, 1919. H. I. Mulcrevy, Clerk. By L. J. Welch, Deputy Clerk. John E. Bennett and Frank L. Sawyer, 246 Russ Bldg., San Francisco, Cal., Attorneys for Plaintiff. [3]

[Endorsed]: No. 16,287. In the Southern Division of the District Court of the United States for the Northern District of California, Second Division. Hartland Law, Plaintiff, vs. Arthur L. Smith et al., Defendants. Transcript of Record. Filed September 27th, 1919. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy. United States Attorney, San Francisco, Cal., Attorney for Defendant Arthur L. Smith. [4]

(Title of Court and Cause.)

Separate Answer of Arthur L. Smith.

Comes now Arthur L. Smith, one of the above-named defendants, by his attorneys, and makes his

separate answer to the complaint herein, as follows:

FOR A FIRST AND SEPARATE DEFENSE THERETO:

1. This defendant admits that he is in the Service of the United States, and in the Reclamation Service thereof, and was in such Service at all times mentioned in the complaint, as hereinafter more specifically alleged, but alleges that in the operation of the Truckee-Carson Project, now known at the Newlands Project, active or otherwise, his duties and activities were only as in a later paragraph hereof alleged.

2. As to whether plaintiff herein, on or about the 30th day of June, 1916, or at any time, was, or is, the owner or in possession of all or any part of the land described in paragraph One of the said complaint this defendant has no information or belief sufficient to enable him to answer, and therefore and upon that ground specifically denies each and every allegation in said paragraph one of said complaint.

3. This defendant alleges that he was at the times mentioned in said complaint, and now is employed by the United States in the Reclamation Service thereof, as "gate-keeper," or "gate-tender," in connection with the operation and maintenance of the dam and outlet gates mentioned in said complaint; that at all times mentioned in said complaint and ever since the 4th day of June, 1915, an exclusive and perpetual easement and right of possession, use and enjoyment in said dam and

gates and the property on which they are placed at or near the outlet of Lake Tahoe, a navigable interstate lake lying partly in California and partly in Nevada, [5] was and has been, and now is, owned by the United States, and the said dam and gates were and have been and now are operated and maintained by the United States, all under and in pursuance of the Constitution of the United States, the Act of Congress approved June 17, 1902, (32 Stat. 388), entitled, "An Act Appropriating the Receipts from the Sale and Disposal of Public Lands in Certain States and Territories, to the Construction of Irrigation Works for the Reclamation of Arid Lands," and acts amendatory thereof and supplementary thereto, and other applicable Congressional acts; that said dam and gates were at all of said times and now are being operated and maintained by the United States in connection with and as a part of that certain system of irrigation works, known as the irrigation works of what was formerly called the Truckee-Carson Project, but is now designated as the Newlands Project, constructed and now being constructed, operated and maintained under and in pursuance of said Acts of Congress; that at and during all of said times defendant's duties under said employment, and every act and thing of whatsoever nature done by him in and about said dam and gates, whether they may have caused or contributed to the alleged occurrences, acts or events described in said complaint or otherwise, were and are done and performed under and in

pursuance of said Constitution and laws of the United States and under and in pursuance of the regulations and instructions duly made and promulgated and duly issued to him, through his superior officers thereunto duly authorized, or directly by the Secretary of the Interior, in pursuance of said Constitution and laws and in consistent and lawful accord therewith and authority thereby; that only under the foregoing conditions and limitations was this defendant in possession of or operating said dam and gates, or controlling the waters and levels of said lake at or during any of the times named in said complaint; and except under the foregoing conditions and limitations this defendant denies the allegation in paragraph Two of the complaint that he [6] was in possession of or operating said dam or gates.

4. Denies the allegation in paragraph Two of the said complaint, that this defendant, as in said paragraph alleged, shut down said gates and thereby caused the surface of the lake to rise to the height of 6229.8 feet above sea level, and alleges the fact to be that on or about the 30th day of June, 1916, the surface of the waters of said lake attained the level of 6229.8 feet above sea level and that the gates in said dam were so operated and used under the power and authority, conditions and limitations aforesaid, as to result, in combination with natural causes, in the attainment of said level. Defendant, however, is informed and believes, and on such information and belief avers, that the waters of said lake for a period of more than

thirty-five (35) years, have been regulated and controlled by said dam and gates, as owned and operated by the United States as aforesaid, and by its predecessors in interest long prior to said 4th day of June, 1915, and by an equivalent dam and gates prior to the building of the present structure, and that the present and former dam and gates, instead of causing higher levels on said lake than in a state of nature, have caused, as the same have been used in the storage of water and regulation of said lake, the levels therein to vary both on the high and on the low side in a much less degree than under natural conditions, and to the benefit and advantage of lands riparian to said lake and their owners, including the lands named in the complaint and the owners thereof.

5. Defendant denies that the raising of the lake surface as aforesaid to 6229.8 feet above sea level, or to any height, resulted in damaging greatly or otherwise any or all of the structures or improvements upon said land, or that the same, or any thereof, were washed out or damaged by the action of the waters of said lake or by the raising of the level thereof, or otherwise. Defendant further denies that the waters of said lake, by reason of the rise of the level thereof as aforesaid or otherwise, were [7] raised upon or covered any of the lands of the plaintiff, except that the level of the water along the shore line thereof, which is abrupt at this point, was brought to 6229.8 feet above sea level, and defendant denies that the waters of said lake as alleged in the complaint or

otherwise, did kill or destroy any trees or shrubbery upon said lands or did wash therefrom any of the soil thereof or wreck, demolish or injure structure thereon or make the dwelling upon said land uninhabitable or any less habitable, or any of the structures or excavations on said lands unusable in whole or in part, and denies that the plaintiff was or has been thereby or at all damaged in the sum of Five Thousand Dollars (\$5,000) or in any sum.

AND FOR A SECOND AND FURTHER AND SEPARATE DEFENSE THIS DEFENDANT ALLEGES:

That plaintiff's pretended cause of action is barred by the provisions of Section 318 of the Code of Civil Procedure of the State of California.

AND FOR A THIRD AND FURTHER AND SEPARATE DEFENSE THIS DEFENDANT ALLEGES:

That plaintiff's pretended cause of action is barred by the provisions of Section 319 of said Code of Civil Procedure.

AND FOR A FOURTH AND FURTHER AND SEPARATE DEFENSE THIS DEFENDANT ALLEGES:

That plaintiff's pretended cause of action is barred by the provisions of Subdivision 1 of Section 339 of said Code of Civil Procedure.

AND FOR A FIFTH AND FURTHER AND SEPARATE DEFENSE THIS DEFENDANT ALLEGES:

That all acts and things done and performed by him in and about the dam and gates mentioned in said complaint, at all the times mentioned therein and at all other times, were done and performed by him as an employee, agent and officer of the United States in pursuance of instructions and regulations duly and [8] legally issued to him under the Constitution and laws of the United States, as more fully described in paragraph 3 of his first defense herein; that he is informed and believes, and on such information and belief avers, that the United States and the Secretary of the Interior, whether acting through or by defendant, or otherwise, have, and at all times mentioned in said complaint have and have had the full right and power to raise the level of Lake Tahoe to more than the elevation 6229.8 feet above sea level as against plaintiff, not only because of the authority granted and set out in such Constitution and laws, and particularly those relating to arid lands as aforesaid, but also because of the fact that the United States through itself and its predecessors in interest, has acquired and now owns the right, privilege and easement to regulate said lake, and to raise the level thereof to said elevation 6229.8 feet above sea level, and indeed to a higher level, by prescription as against plaintiff and the lands described in the complaint, and to overflow said lands by that means, in that it and they have so regulated said lake continuously and raised the level of said lake to said elevation and more, in and upon the lands described in said complaint,

and against and adversely to the owners thereof and all those having an interest therein, including the plaintiff and *and* his predecessors in interest, and have in that way and by that means overflowed said lands continuously and whenever required in connection with its and their storage operations and regulation of said lake, for a period of more than five (5) years prior to the commencement of this action, and for a period of more than five (5) years prior to the date set forth in the complaint herein of the alleged injury to plaintiff's lands; and during all of said period it and they have been in the actual occupation, possession, use and enjoyment of said right, privilege and easement, openly, notoriously and peaceably and not [9] clandestinely, and adversely and in hostility to plaintiff's title and claim of title and under a claim of right and title exclusive of any other right and as its and their own and with notice to, and with the knowledge of, plaintiff and his grantors and predecessors in interest, and uninterruptedly and continuously in connection with its and their storage operations and regulation of said lake; and that by reason of the matters and things aforesaid no recovery can be had against this defendant, nor can he be personally held for damages herein.

AND FOR A SIXTH AND FURTHER AND SEPARATE DEFENSE THIS DEFENDANT ALLEGES:

That he is informed and believes, and on such information and belief avers, that the United

States, under and in pursuance of the Constitution and laws thereof, by so raising the level of said lake in the month of June, 1916, to said elevation of 6229.8 feet above sea level, did take and appropriate, and did thereafter use and enjoy an easement over said land, or a special use thereof, to the extent marked by said elevation; and under and in pursuance of the Constitution and laws of the United States aforesaid, any recovery by plaintiff, if any can be had in that relation, for such taking and appropriation, must be from and against the United States, in a suit under the statute in that case provided, and not against defendant, whose acts and undertakings as aforesaid, were done and performed in pursuance of regulations and instructions duly issued and promulgated by his superiors in office, and as an agent or employee of the United States, and were the acts of the United States under the law, and not the personal acts of this defendant.

AND FOR A SEVENTH AND FURTHER AND SEPARATE DEFENSE THIS DEFENDANT ALLEGES:

That heretofore, to wit, on or about the 4th day of August, 1908, suit was instituted in the Superior Court of the State of [10] California, in and for the County of Placer, entitled M. Lawrence and H. O. Comstock, etc., against Murry F. Vandall, et al., defendants, No. 3966.

That the plaintiffs in said suit in effect and substance alleged, among other things, that during all the times mentioned in the complaint in said suit,

they were the owners of those certain tracts of land in said complaint described, bounding upon Lake Tahoe and situate and lying in Eldorado County, California, together with the improvements thereon; that defendants in said suit, on or before the 23d day of October, 1902, constructed across the mouth (meaning outlet) of said Lake Tahoe, a certain dam extending to the height of ten (10) feet above the "natural and low water level" of said lake and had ever since maintained and did maintain at the time of the institution of said suit, said dam in the position aforesaid; that by reason of said dam the waters of said Lake were prevented from flowing out of said Lake and were held back within said Lake, and the surface thereof was raised above its "natural and normal" level to a great height, to wit, ten (10) feet; that by reason of the raising of the Lake by said defendants, the building upon said lands in Emerald Bay was damaged, the carpets on the floor therein were wetted and destroyed, the furniture therein was wetted, warped and swollen, the underpinning of said house was injured and plaintiffs were prevented from letting the said house and premises during the seasons of 1906 and 1907; that the total damage thereto in all amounted to Seven Thousand Dollars (\$7000), and said plaintiffs were damaged to that amount.

That said lands described in said complaint embrace and include and in part are, the identical lands described in the complaint herein, to wit:

“a strip of land of uniform depth on the west shore of Emerald Bay, commencing at a point of rock known as Maiden’s rock on the west shore of Emerald Bay and extending north-easterly along [11] shore line of said Emerald Bay, three hundred feet with a uniform depth back from said shore line sufficient to contain two acres of land, being a part of lot 1, Section 21, Tp. 13 N. R. 17 E., M. B. & M., County of Eldorado, State of California.”

That the United States has acquired from said defendants in said suit, mediately or immediately, and at all times mentioned in the complaint herein and prior thereto was and ever since said times has been, and now is the owner of said dam and the gates thereof and the right to regulate the same and to regulate the aforesaid Lake thereby, and all the rights, privileges and immunities of said defendants under and by virtue of their ownership and operation of said dam and gates and regulation of said Lake, and including those inuring to said defendants under and by virtue of the judgment entered in said suit, the character and effect of which said judgment is hereinafter alleged.

That defendant herein is informed and believes, and on such information and belief avers, that such right or title to said lands hereinabove last described as the plaintiff herein has acquired and now owns, if any he has, has been acquired from the plaintiffs in said suit subsequent to the commencement thereof and is subject to all the liabilities, easements and servitudes attached and inci-

dent to said lands under and by virtue of said judgment.

That the aforementioned suit was adjusted and settled by stipulation between the parties and a judgment dismissing the same was duly entered thereon on November 21, 1908, in said court of competent jurisdiction, which said judgment was explicitly described and designated, and in fact was, a judgment on the merits in said suit;

That the issues presented herein as to the right of the defendant (heretofore alleged to be acting solely as a representative, agent and officer of the United States) and as well the right of the United States to regulate said Lake over and upon said lands by means of said dam and to overflow said lands and cause the water to [12] stand thereon at an elevation of 6229.8 feet above sea level, as alleged in the complaint herein, are included in those issues arising in the earlier action aforesaid, and that the judgment in said last-named action in its dismissal of the claim for damages and confirmation of the right of the predecessors in interest of the United States, among other things, to overflow said lands to the height alleged in the complaint in said action, which said height was greater than that alleged in the complaint herein, constitutes and perforce must be held to be an estoppel against plaintiff herein and does estop him from demanding or recovering any damages for such overflowing of said lands or injury thereto or the improvements thereon; and that defendant herein, acting within said right of the United States and

as its representative, agent and officer, cannot be recovered against for any acts or things done by him in that relation in respect to said lands, and further, that the matters in controversy in said suit have been finally adjudicated by the said judgment of said Superior Court in an action based on an alleged injury of a permanent character, and that the plaintiff herein ought not to be heard to allege anything contrary thereto in respect to said lands.

WHEREFORE, defendant prays that plaintiff take nothing by this action, and that same be dismissed and held for naught, and that defendant have and recover of plaintiff his costs and disbursements in this behalf sustained.

FRANK M. SILVA,
United States Attorney.

E. M. LEONARD,
Assistant United States Attorney.

H. A. COX,
District Counsel, Reclamation Service.

DAVID A. PINE,
Special Assistant to the Attorney General,
Arthur L. Smith, [13]
Attorneys for Defendant,

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

E. M. Leonard, being first duly sworn, deposes and says: That he is Assistant United States Attorney in and for the Northern District of California and as such is one of defendants' attorneys

in this action; that he has read the foregoing answer and knows the contents thereof; that he is informed upon reliable information that the contests thereof is true and therefore affirms that the same is true except as to matters therein stated on information and belief and that as to those he also believes it to be true; and that the reason this verification is not made by plaintiff is that he is not within the County of San Francisco, which is the county wherein this affiant resides.

E. M. LEONARD.

Subscribed and sworn to before me this 1st day of February, 1921.

[Seal]

WALTER B. MALING,

Clerk U. S. District Court, Northern District of California.

Received copy of the within answer the 1st day of February, 1920.

JOHN E. BENNETT,

Attorney for Plaintiff.

[Endorsed]: Filed Feb. 2, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [14]

At a stated term, to wit, the March term, A. D. 1921, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the city and county of San Francisco, on Tuesday, the 31st day of May, in the year of our Lord one thousand nine hundred and twenty-one. Present The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 16,285.

MELVILLE W. LAWRENCE et al.

vs.

ARTHUR L. SMITH.

No. 16,287.

HARTLAND LAW

vs.

ARTHUR L. SMITH.

No. 16,292.

EUGENE D. N. E. LEHE

vs.

ARTHUR L. SMITH.

No. 16,293.

NELLIE COPLAND et al.

vs.

ARTHUR L. SMITH.

Minutes of Court—May 31, 1921—Trial.

These causes came on regularly this day for trial, John E. Bennett, and F. W. Sawyer, Esqrs., appearing as attorneys for plaintiffs and E. M. Leonard, Asst. U. S. Attorney, and H. A. Cox, Brooks Fullerton and George A. H. Fraser, Esqrs., appearing on behalf of defendant. It appearing that the alleged cause of damage in the four above actions is a cause common to all; it is ordered that these causes be consolidated for trial. Thereupon the following named persons, to wit:

- | | |
|----------------------|----------------------|
| 1. James R. Eubanks | 7. Paul V. Harris |
| 2. George J. Wallace | 8. Frank M. Farrell |
| 3. Ray W. Simonds | 9. N. B. Livermore |
| 4. Walter S. Leland | 10. Thos. H. Haskins |
| 5. R. C. Franke | 11. W. T. Wood |
| 6. John S. Wilson | 12. A. Arenson |

[15]

twelve good and lawful jurors, were, after being examined under oath by counsel; accepted and sworn to try the issues joined herein. Mr. Bennett made the opening statement on behalf of plaintiffs and Mr. Leonard made the opening statement on behalf of defendant. Dr. Hartland Law was sworn and testified on behalf of plaintiffs and plaintiffs introduced in evidence and filed their exhibit marked "1." On cross-examination the defendant introduced in evidence and filed his exhibit marked "A." Ordered that the further trial be continued to to-morrow morning at ten o'clock and the jury, after being admonished by the Court, were excused until that time. [16]

At a stated term, to wit, the March term, A. D. 1921, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the city and county of San Francisco, on Wednesday, the 1st day of June, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

(Title of Causes.)

Minutes of Court—June 1, 1921—Trial (Continued).

The parties and the jury being present as heretofore the trial was resumed. H. O. Comstock was sworn and testified on behalf of plaintiffs; and plaintiffs rested. Mr. Leonard moved for judgments of nonsuit and after arguments by counsel the motions *was* submitted and being fully considered it was ordered that said motions be granted and that judgments of nonsuit be entered in the above causes. Ordered that the jury be discharged from further consideration herein. Upon motion of Mr. Leonard it was ordered that each side may withdraw their exhibits. [17]

(Title of Court and Cause.)

Judgment of Nonsuit.

This cause having come on regularly for trial on the 31st day of May, 1921, being a day in the March, 1921, term of said court, before the Court and a jury of twelve men duly impaneled and sworn to try the issue joined herein; John E. Bennett and F. W. Sawyer, Esqrs., appearing as attorneys for plaintiff and E. M. Leonards, Assistant United States Attorney, H. A. Cox, Brooks Fullerton and George A. H. Fraser, Esqrs., appearing on behalf of defendant; and the trial having been proceeded

with on the first day of June in said year and term and oral and documentary evidence having been introduced on behalf of plaintiff; and the attorney for defendant having thereupon moved the Court for a judgment on nonsuit and the Court, after hearing arguments of the respective parties upon said motion and after full consideration thereof, having ordered that said motion be granted and that a judgment of nonsuit be entered herein; with costs to the defendant:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that plaintiff take nothing by this action; that judgment of nonsuit be and is hereby entered against said plaintiff herein; that the defendant go hereof without day; and that said defendant do have and recover of and from said plaintiff his costs herein expended taxed at \$23.74.

Judgment entered June 1, 1921.

WALTER B. MALING,
Clerk. [18]

(Title of Court and Causes.)

Plaintiff's Notice of Intention to Move for New Trial.

To the Defendant Smith Herein, and to E. M. Leonard, Esq., Assistant District Attorney of the United States, His Attorney,

The plaintiff in the above-entitled consolidated cases hereby gives notice of intention to move for a new trial in the above-entitled cases, and for an

order of Court vacating the verdict and setting aside the judgment entered herein, and granting thereupon plaintiffs a new trial in the above-entitled actions, for the following cause:

Error in law occurring at the trial.

That the said error consisted in this: That during the said trial, and during the examination by plaintiff of a witness for plaintiff the purpose of which testimony was to show damage done to plaintiff's land by the act of defendant in raising the waters of said lake through the means of said dam, the defendant thereupon objected to the introduction of any testimony by plaintiff tending to prove any damages upon plaintiff's lands because of the act of defendant in raising the waters of the said lake to the height of 6229.8 through the handling by defendant of the said dam as occurring during the year 1916, on the ground that damages occurring to plaintiff's lands or structures thereon or otherwise occurring during the year 1916 were barred by the statute of limitations of the State of California, being section 339 of the Code of Civil Procedure of said state, suit for such damages being, as contended by defendant in the nature of an action of trespass on the case, and by reason of said section of said Code of Civil Procedure expired in two years from and after the commission of said act, which occurred in June 30th, 1916, suit thereon not having been filed by plaintiff until June 24th, 1919.

That the Court thereupon sustained the said objection and [19] thereupon a nonsuit of plain-

tiff was granted by the Court to which plaintiff excepted, whereupon the jury under instructions of the Court rendered a verdict for defendant and judgment on said verdict was thereupon entered, subject to the right of plaintiffs to make this motion for new trial before the same shall have become final.

And plaintiff says that the Court in so ruling committed an error of law, in that the said act of defendant as plaintiff contends and alleges, was not trespass on the case, but trespass, and the action was not barred by section 339 of said Code of Civil Procedure as expiring in two years after said 30th day of June 1916, but was barred only by Section 338 of said Code of Civil Procedure which provides three years for the bringing of such action, said act of defendant being and constituting a trespass upon real property of plaintiffs.

WHEREFORE by reason of said error of the Court in so ruling upon the law in said case, plaintiff makes this his motion for a new trial and serves notice upon defendant of his intention to move for a new trial, and petitions the Court that the judgment and verdict herein entered may be set aside and that he may have a new trial hereon.

JOHN E. BENNETT,
F. W. SAWYER,
Attorneys for Plaintiffs.

Service of within and receipt of copy hereby admitted this 9th day of June, 1921.

FRANK M. SILVA,
U. S. Atty.,
E. M. LEONARD,
Asst. U. S. Atty.,
Attorneys for Defendants.

[Endorsed]: Filed Jun. 10, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[20]

At a stated term, to wit, the July term, A. D. 1921, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Monday, the 11th day of July, in the year of our Lord one thousand nine hundred twenty-one. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 16,287.

HARTLAND LAW

vs.

ARTHUR L. SMITH, etc.

**Minutes of Court—July 11, 1921—Order Denying
Motion for New Trial.**

Plaintiff's motion for new trial came on to be heard and after arguments being submitted, it was ordered that said motion be and the same is hereby denied. [21]

(Title of Court and Causes.)

Stipulation Extending Time to File Bill of Exceptions.

It is hereby stipulated by and between the parties hereto that the plaintiffs may have twenty days from and after the date hereof in which to prepare serve and file their proposed bill of exceptions herein. This stipulation need not be filed.

Dated this 11th day of June, 1921.

FRANK M. SILVA,
U. S. Attorney,
E. M. LEONARD,
Asst. U. S. Atty.,
Attorneys for Defendant.

It is ordered:

FRANK H. RUDKIN,
U. S. District Judge.

Stipulation Extending Time to File Bill of Exceptions.

It is hereby stipulated between the parties hereto that plaintiffs may have twenty days from and after this date in which to prepare and serve their bill of exceptions herein.

Dated this 30th day of June, 1921.

FRANK M. SILVA,
U. S. Atty.,
E. M. LEONARD,
Asst. U. S. Atty.,
Attorneys for Defendant.

It is so ordered.

FRANK H. RUDKIN,
U. S. District Judge. [22]

(Title of Court and Causes.)

**Stipulation Extending Time to File Bill of
Exceptions.**

It is hereby stipulated that plaintiffs herein may have twenty days from and after this date in which to prepare and serve their bill of exceptions herein.

Dated this 19th day of July, 1921.

FRANK M. SILVA,
Attorneys for Defendant.

The foregoing stipulation is hereby extended to and including twenty days from and after the 8th day of August, 1921.

FRANK M. SILVA,
Attorneys for Defendant.

The foregoing stipulation is hereby extended to and including twenty days from and after the 28th day of August, 1921.

FRANK M. SILVA,
U. S. Atty.,
E. M. LEONARD,
Asst. U. S. Atty.,
Attorneys for Defendant.

It is so ordered:

FRANK H. RUDKIN,
U. S. District Judge.

In these consolidated cases the plaintiffs have prepared, served and filed herein their proposed

bill of exceptions to be used on an appeal, or writ of error, to which proposed bill of exceptions defendants have proposed certain amendments, the settlement of which is now pending and being considered by the Court and the respective attorneys and cannot be determined and settled before the expiration of the present term of this court.

NOW, THEREFORE, it is hereby stipulated and agreed by and between the respective parties hereto that the jurisdiction of [23] the above-entitled Court to act and settle the said bill of exceptions on behalf of plaintiffs may be and hereby is extended from the present term to and including the next ensuing term of said court, to wit, to and including the 4th day of March, 1922.

Dated October 26, 1921.

JOHN T. WILLIAMS,
U. S. Attorney,
E. M. LEONARD,
Asst. U. S. Atty.,
Attorneys for Defendants.
F. W. SAWYER, and
JOHN E. BENNETT,
Attorneys for Plaintiffs.

It is so ordered:

FRANK H. RUDKIN,
U. S. District Judge.

[Endorsed]: Filed Mar. 16, 1922. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[24]

(Title of Court and Causes.)

Bill of Exceptions.

BE IT REMEMBERED, that on the 1st day of June, 1921, the above-entitled causes came on for trial before the above-entitled court and a jury, the Court having ordered all of said cases consolidated for the purpose of trial.

Honorable William C. Van Fleet presiding, the plaintiffs appearing by John E. Bennett and F. W. Sawyer, and defendants appearing by Frank M. Silva, United States District Attorney, and E. M. Leonard, Assistant United States District Attorney, and Henry A. Cox, District Counsel United States Reclamation Service and the following proceedings were had:

It was admitted in evidence that Hartland Law, one of the plaintiffs herein, was at the time alleged in his complaint the owner and in possession of the property described in the complaint.

Also H. O. Comstock, of the firm of Lawrence & Comstock, one of the plaintiffs, a witness for plaintiff, Lawrence & Comstock, testified as follows:

Q. You have a place at Brockway, on Lake Tahoe? A. Yes.

Q. Do you recall a rise in the lake surface in the latter part of June, June 24 to June 30, in 1916, the water rising upon your place? A. Yes, sir.

Q. Just state to the jury what you have at Brockway, and at any other place, or any other region of the lake, around the lake, what land you

have, and how such land is improved, and what the condition was at the time the water rose.

The COURT.—You mean, of course, only the premises involved in the complaint, here?

Mr. BENNETT.—Yes, the lands described in the complaint. [25]

The COURT.—Your question should be to describe the premises set forth in his complaint; we are not concerned with any other.

Mr. BENNETT.—That is true, your Honor. They admit the ownership of the land described in the complaint.

The COURT.—Then what is the necessity of this?

Mr. BENNETT.—Merely to show what the condition was upon those several tracts of land that they had around the lake at this time.

The COURT.—Very well.

Mr. LEONARD.—If counsel will pardon me, I think we can get ahead faster by having Mr. Comstock locate on this chart where his property is.

The following questions among others were made to and answered by Hartland Law, one of the plaintiffs herein and a witness for plaintiff Law.

Mr. BENNETT.—State to his Honor and the Jury if there was a rise in the waters of the lake at your place in June, 1916, and what the condition of the place that you had was in consequence of that rise? I may say before that question is answered that it is stipulated that this (indicating) is the correct curve of the risings and fallings of the lake during the period that is stated, reaching from 1900 up until 1920; it is a hydrographic survey or curve

made by the engineers of the Government.

The COURT.—Of the annual rise and fall of the lake?

Mr. BENNETT.—Yes. This is the evidence. In 1916 the lake, by this curve, shows 6229.80, which is the figure we have in the complaint, the rise that caused us the injury. You will find that in 1915, in January, the line greatly falls, so that it is 6227. So that as between January and this month in here, which is June, there was a rise from 6227 up to 6229.8.

Mr. BENNETT.—(To Witness.) From June 24, 1916, Dr. Law, and after that time, was there on June 24th, 1916, and after that in [26] June a rise in the lake at your place? A. There was.

Q. What if any damage did that do, that rise in the lake at that time?

A. On account of the water being so high, whenever the boats passed, like the Tahoe steamer, the waves from the boat just washed up to the under side of the floor of the house and wet the floor; it also rose above the septic tank, and entirely filled the septic tank, and made it absolutely useless. And the ice house that we had in the boat house, or rather, in the basement of the boat house, was entirely destroyed. The gasoline tanks under the wharves were made useless. And, of course, the beach, and the walls on the beach, and the plants and shrubbery that we had arranged was destroyed.

H. O. COMSTOCK, of Lawrence & Comstock, one of the plaintiffs and a witness for Lawrence & Comstock testified in part as follows:

Mr. BENNETT.—Now, just explain to the jury how your property was improved, and what the surface of it was with respect to improvements at the time of the rise of the lake, and prior to the rise in question?

A. I will try and be very concise in this description, so as to give you just a little idea: Brockway is at the north end of the lake. The steamer coming around, we have a pier out there which has an L to it to protect the small boats in behind. East of the pier we built a stone wall, about 140 feet long, and we built it $4\frac{1}{2}$ feet high and filled in behind with dirt, to have a lawn in front of the house. We also found there was hot water coming up in the lake, and we enclosed it by a cribbing of rocks, and then used small rock, and we boarded it on both sides and top and closed out the lake water, so that it came in very slowly, and the hot water came in and mixed with the cold water, and made a rise of temperature of about 18 degrees in the swimming pool. When this high water came in 1916, the lake became so high that the water was within about 13 or 14 inches of the top of the pier. We sent word over to the man in charge of the gate at Tahoe City that the water was so high that it was doing [27] damage. He replied that he was there under a salary and could not change the gate without further orders. There came a big storm, the wind com-

ing from the southwest, which gave it the full sweep of the lake, it gradually was eating the wall away, it would go in and get the soil behind and suck it out, and eventually it took the whole wall down.

Mr. LEONARD.—Your Honor, I desire to interpose an objection at this time. The witness is testifying to the effects of a storm. This calls to my mind that possibly on behalf of the Government I should have interposed a blanket objection to all testimony introduced with reference to damage prior to June 24, 1917. During your Honor's illness a demurrer was interposed and was passed upon by Judge Bean. Judge Bean said in effect, that in view of the condition of the authorities, and the uncertainty of the rule, the demurrer ought not be sustained, but the case should be disposed of at the trial; and that if the action is barred by the statute of limitations, inasmuch as the Government is really the defendant in the case, it will not be injured by proceeding to trial, whereas on the other hand, if the action is not barred, and the Court should rule that it was, the plaintiff would be compelled to appeal the case, causing delay and expense and therefore he felt that the demurrer should be overruled and the case tried on its merits. In view of that, if your Honor please, I take it that it is my duty to preserve the rights of the Government, and to interpose an objection to any evidence of damage prior to June 24, 1917.

The COURT.—1916, do you mean?

Mr. LEONARD.—No, your Honor, 1917. The

suit was filed in 1919. Of course everything must be excluded from 1916, which was a three-year period, and which would be a statutory period for direct trespass.

The COURT.—I think the backing up of water upon the premises [28] in the manner here shown, is not, in its nature, a direct trespass, it is a trespass which is the subject matter of an action for trespass on the case. A physical invasion by one upon the property of another, either by an individual, or with teams, or men, is, of course, a direct trespass; but where an act which causes the injury is not a direct cause of the invasion of the premises, but merely the indirect cause which produces an effect, which might not occur but for the intervention of other circumstances, then, it is not a direct trespass. I think the objection to anything, under the circumstances pleaded here—the objection to anything occurring prior to the period when the statute would bar an action of direct trespass is well taken.

The objection to the evidence here will be sustained; that is to say to any evidence as to injury as far back as 1916.

Mr. LEONARD.—Any evidence prior to June 24th, 1917, the two-year period?

The COURT.—Yes. I am satisfied the injury shown is a consequential injury.

Mr. BENNETT.—We take an exception to the ruling of the Court.

Mr. BENNETT.—We cannot proceed if we can-

not introduce any testimony to show what the damages were in 1916, by reason of your Honor's ruling, upon the ground that this is an action on the case and not an action in trespass.

The COURT.—Well, what do you propose to do—take a nonsuit?

Mr. BENNETT.—There is nothing else to do.

Mr. SAWYER.—(For the plaintiffs.) We have no further testimony. Our damages are all confined to the year 1916.

The COURT.—And the action was not commenced until June, 1919?

Mr. BENNETT.—No. We were dickering with the Government upon a compromise and were held up and prevented thereby because the Government was going to pay the damages. [29]

Mr. LEONARD.—That is outside of the record, your Honor.

The COURT.—It is merely stated by way of explanation as to why they did not commence their action earlier. I see here it is June 4th, 1919, I thought you said June 24. This says "Filed June 4."

Mr. LEONARD.—I am in error about that your Honor. I am speaking of the complaint in the Lawrence case.

The COURT.—Were they all filed on the same date?

Mr. BENNETT.—I think so, they were all filed in 1919.

Mr. LEONARD.—They were all filed in June,

1919. I understand counsel to say he has no further evidence?

Mr. SAWYER.—We have no further evidence on damages. We have no further case. Our case is based on damages in 1916. Under the ruling we are excluded from further testimony.

Mr. LEONARD.—I move for a nonsuit.

The COURT.—The nonsuit will be granted as to all four cases. Gentlemen of the jury, you will be excused from further consideration of the case.

Mr. SAWYER.—We take an exception to the order granting the nonsuit.

Counsel for plaintiffs hereby tender this their bill of exceptions and pray that it may be settled and allowed and signed and certified by the Judge as provided by law.

JOHN E. BENNETT,
F. W. SAWYER,
Attorneys for Plaintiffs.

Order Settling Bill of Exceptions.

Upon application of plaintiffs and it appearing that the foregoing bill of exceptions has been agreed upon between counsel subject to stipulations following the same is hereby settled and allowed on this 27th day of February, 1922.

WM. C. VAN FLEET,
Judge. [30]

It is hereby stipulated between counsel for the respective parties hereto that the within bill of exceptions may be signed by the Court and sealed as bill of exceptions in this case, but that the same

shall in no wise constitute a waiver or prejudice the right of plaintiff to make or file any motion or motions to strike from the files the said bill of exceptions upon the ground that the same was not served or filed within the time allowed by the rules of practice of this court or upon any other ground.

JOHN E. BENNETT,
F. W. SAWYER,
Attorneys for Plaintiffs.
JOHN T. WILLIAMS,
U. S. Attorney,
E. M. LEONARD,
Asst. U. S. Atty.,
Attorneys for Defendant,
A. L. SMITH.

[Endorsed]: Filed Feby. 27, 1922. Walter B. Maling, Clerk. [31]

(Title of Court and Causes.)

Petition for Allowance of Writ of Error.

Hartland Law, Eugene D. N. E. Lehe, Melville W. Lawrence and H. O. Comstock, copartners, doing business as Lawrence & Comstock, Nellie Copland and John Doe Copland, her husband, plaintiffs and petitioners, feeling themselves aggrieved by the rulings of the Court in the verdict and judgment therein entered on the 11th day of July, 1921, come now by Messrs. John E. Bennett and F. W. Sawyer, their attorneys, and petition said Court for an order allowing said plaintiffs to prosecute a writ of error

to the Honorable the United States Circuit Court of Appeals, for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the plaintiffs shall give and furnish upon said writ of error, and that upon the giving of such security the said writ of error issue.

JOHN E. BENNETT and
F. W. SAWYER,
Attorneys for Plaintiffs.

[Endorsed]: Filed Jan. 10, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [32]

(Title of Court and Causes.)

Assignment of Errors.

The foregoing cases having been by order of the above-entitled Court consolidated, and so consolidated trial was begun thereon in said court before a jury, and on June 1st, 1921, in the course of said trial a motion for nonsuit therein was made by defendant Smith, being the only defendant who had been served with summons, and the said motion was thereupon granted by the Court and exception thereto was taken by plaintiff; and thereafter the Court instructed the jury to render a verdict for defendant which the jury did and thereupon judgment was entered in favor of defendant and against plaintiff dismissing said actions as to all of said plaintiffs

and for costs against plaintiffs. And thereafter plaintiffs filed their motion for new trial therein and said motion for new trial coming on to be heard on the 11th day of July, 1921, the Court denied the same, and thereupon said judgment became final, to which order denying said motion plaintiffs duly excepted. And upon a writ of error upon such judgment returnable at the next term of this Court to be begun and holden in the City and County of San Francisco aforesaid on the — day of —, in the year 1922, plaintiffs and respondents at whose instance said writ of error is sued out, assign for error in the records of processes and judgment as aforesaid, the following, to wit:

That during said trial and during the examination by plaintiffs of a witness for plaintiffs, for the purpose of which testimony was to show damage done to plaintiffs' lands and certain structures thereon by the waters of Lake Tahoe, which had been raised by defendant upon the lands of plaintiffs through defendant shutting down the dam at the mouth of Lake Tahoe for the purpose of backing the said waters up upon the land of plaintiffs and others whereby the quantity of water in said Lake Tahoe might be increased for the benefit [33] of defendant in drawing the same off and delivering the same elsewhere—while said witness was thus under examination defendant objected to any testimony being given by plaintiffs and by said witness as to any damage which had been thus occasioned during the year 1916, the same being the year in which said damage is alleged by the complaints to have oc-

curred, on the ground that such damage, if any, were barred by the statute of limitations of the Code of Civil Procedure of the State of California, within which state said lands were located, the said statute being section 339 of said Code, action thereunder requiring to be brought within two years from the time such injury arises. The said statute does not provide for a trespass upon or injury to real property but provides that there must be brought within two years an action "upon a contract, obligation or liability not founded upon an instrument of writing." Whereas section 338 of said Code provides that there must be brought within *three* years an action "for trespass upon or injury to real property." Defendant contended before the Court that plaintiffs' action having not been brought within two years, but having been brought within three years, was not upon, and the act of defendant in raising the water upon plaintiffs' lands was not, a trespass upon or injury to real property, but was trespass on the case, the same being not trespass at all within the language of section 338. That by reason of defendant raising the said waters as aforesaid not being trespass, said action not having been brought within two years from the date of the alleged injury, no evidence thereupon should be admitted. The Court, Hon. Wm. C. Van Fleet, so held, sustained defendants' objection to said evidence or the question therefor, whereupon defendant moved a nonsuit, which the Court granted and to which plaintiffs excepted.

The foregoing rulings are assigned herein as error, plaintiffs asserting that the injuries alleged in the complaints and offered in [34] proof are trespass to real property and not trespass in the case, and that the actions thereupon were properly brought within three years from the date of their occurrence.

WHEREFORE, plaintiffs pray that the judgment against them as aforesaid, for the error aforesaid, and other errors in the record aforesaid, proceedings and matters herein set forth, may be referred and annulled and held for nothing and that they may be restored to all things lost by them by reason of said judgment.

JOHN E. BENNETT and
F. W. SAWYER,
Plaintiffs' Attorneys.

[Endorsed]: Filed Jan. 10, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [35]

(Title of Court and Causes.)

Order Allowing Writ of Error.

Upon motion of John E. Bennett and F. W. Sawyer, Esqs., attorneys for above-named defendants, and upon filing a petition for a writ of error and assignment of errors,

IT IS ORDERED that a writ of error be and it is hereby allowed to have review in the United States Circuit Court of Appeals for the Ninth Cir-

cuit, the judgment heretofore entered herein and that the amount of bond on said writ of error be fixed in the sum of Three Hundred and no/100 (\$300.00) Dollars, the same to be given by Hartland Law, and to stand for the said consolidated cases and plaintiffs and to serve as cost bond on said writ of error.

WM. W. MORROW,
Judge.

[Endorsed]: Filed Jan. 10, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [36]

(Title of Court and Causes.)

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, that we, Hartland Law, as principal, and Globe Indemnity Company, as surety, are held and firmly bound unto Arthur L. Smith, Dam Gate-keeper, A. P. Davis, Chief Engineer and Director F. G. Hough, Late Project Superintendent, John F. Truesdell, Special Assistant to the Attorney General of the United States Reclamation Service, in the full and just sum of Three Hundred (300) Dollars, to be paid to them, their certain attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

SEALED with our seals and dated this 10th day of January, 1922.

WHEREAS, lately at a District Court of the United States for the Northern District of California, in a suit depending in said Court, between Hartland Law, consolidated cases, Eugene D. N. E. Lehe, Melville W. Lawrence and H. O. Comstock, copartners, etc., Nellie Copland and John Doe Copland, as separate plaintiffs, and the foregoing first named parties, as defendants, a judgment was rendered against the said Hartland Law and others as aforesaid, and the said Hartland Law, in said consolidated cases, having obtained from said Court a writ of error to reverse the said judgment, in the aforesaid suit, and a citation directed to the said defendants citing and admonishing them to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California,

NOW, the condition of the above obligation is such that if the said Hartland Law shall prosecute to effect and [37] answer all damages and costs, if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

HARTLAND LAW,
GLOBE INDEMNITY COMPANY [Seal]

By JOHN H. ROBERTSON,
Agent and Atty.-in-fact.

Form of bond and sufficiency of sureties approved.

WM. W. MORROW,
Judge.

[Endorsed]: Filed Jan. 10, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [38]

(Title of Court and Cause.)

Praeipie for Transcript on Writ of Error.

To the Clerk of Said Court:

Sir:

Please make up transcript in error in the above-entitled case, to be composed of the following papers:

Plaintiffs' complaint as amended.

Answer of defendant Smith.

Assignment of errors.

Bill of exceptions.

Bond on writ of error.

Certificate of Clerk U. S. District Court to
transcript on writ of error.

Citation on writ of error.

Stipulations extending time to prepare and
file and settle bill of exceptions.

Minutes of court at trial, two days, June —, 1921.

Order denying motion for new trial.

Order allowing writ of error.

Motion for new trial—plaintiffs' notice of
intention to move.

Orders extending time to prepare and file
record of transcript on appeal.

Order settling bill of exceptions.

Petition for writ of error.

Praeipie for transcript of record.

JOHN E. BENNETT and

F. W. SAWYER,

Attorneys for Plaintiff.

[Endorsed]: Filed Mar. 16, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [39]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

Nos. 16,285, 16,287, 16,292, 16,293.

HARTLAND LAW,

Separate Plaintiff,

EUGENE D. N. E. LEHE,

Separate Plaintiff,

MELVILLE W. LAWRENCE, et al.,

Separate Plaintiffs,

NELLIE COPLAND et al.,

Separate Plaintiffs,

vs.

ARTHUR L. SMITH, Dam Gate-keeper, et al.,

Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing thirty-nine (39) pages, numbered from 1 to 39, inclusive, to be a full, true and correct copy of the record and proceedings in the above-entitled causes, as enumerated in the praecipe for record on writ of error, as the same remains of record and on file in the office of the Clerk of said Court, and that the

same constitute the return to the annexed writs of errors.

I further certify that the cost of the foregoing return to writs of errors is \$18.25; that said amount was paid by the plaintiffs, and that the original writs of errors and citations issued in said causes are hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 27th day of March, A. D. 1922.

[Seal] WALTER B. MALING,
Clerk United States District Court for the Northern
District of California. [40]

Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETING:

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Melville W. Lawrence and H. O. Comstock, doing business as Lawrence & Comstock, Arthur L. Smith, Dam Gate-keeper, A. P. Davis, Chief Engineer and Director; F. G. Hough and John P. Truesdell Special Assistant to U. S. Attorney General Reclamation Service, Defendants in Error, a manifest error hath happened, to the great damage of the said Melville W. Lawrence and H.

O. Comstock, doing business as Lawrence & Comstock, plaintiffs in error, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, the 10th day of January, in the year of our Lord one thousand nine hundred and twenty-two.

[Seal]

WALTER B. MALING,
Clerk of the United States District Court, Northern
District of California.

By J. A. Schaertzer,
Deputy Clerk.

Allowed by

WM. W. MORROW,
Judge Circuit Court of Appeals. [41]

(Return to Writ of Error.)

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the pliant whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded by the Court.

[Seal] WALTER B. MALING,
Clerk U. S. District Court for the Northern District
of California.

[Endorsed]: No. 16,285. United States District Court for the Northern District of California. Melville W. Lawrence and H. O. Comstock, etc., Plaintiffs in Error, vs. Arthur L. Smith, etc., et als., Defendant in Error. Writ of Error. Filed Jan. 11, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Due receipt of copy of within admitted this 11th day of January, 1922.

JOHN T. WILLIAMS,
U. S. Atty.,
E. M. LEONARD,
Asst. U. S. Atty.,
Attorneys for Defendants.

Citation on Writ of Error.

UNITED STATES OF AMERICA,—ss.

'The President of the United States, to Arthur L. Smith, Dam Gate-keeper, A. P. Davis, Chief Engineer, F. G. Hough, Late Project Superintendent, John P. Truesdell, Reclamation Service, Special Assistant to the Attorney General of the United States, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, wherein Melville W. Lawrence and H. O. Comstock, copartners doing business as Lawrence & Comstock, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable W. W. MORROW, United States Circuit Court for the Ninth Circuit, United States Circuit Court of Appeals, this 10th day of January, A. D. 1922.

WM. W. MORROW,
United States Circuit Judge. [42]

Due receipt of copy admitted this 11th day of January, 1922.

JOHN T. WILLIAMS,
U. S. Atty.,
E. M. LEONARD,
Asst. U. S. Atty.,
Attorneys for Defts.

[Endorsed]: No. 16,285. United States District Court for the Northern District of California. Melville W. Lawrence and H. O. Comstock, etc., Plaintiffs in Error, vs. Arthur P. Smith, et als., etc., Defendants in Error. Citation on Writ of Error. Filed Jan. 11, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETING:

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Hartland Law and Arthur L. Smith, Dam Gate-keeper, A. P. Davis, Chief Engineer and Director, F. G. Hough, Late Project Superintendent, John P. Truesdell, Special Assistant to Attorney General U. S. Reclamation Service, Defendants in Error, a manifest error hath happened, to the

great damage of the said Hartland Law, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, the 10th day of January, in the year of our Lord one thousand nine hundred and twenty-two.

[Seal] WALTER B. MALING,
Clerk of the United States District Court Northern
District of California.

By J. A. Schaertzer,
Deputy Clerk.

Allowed by:

WM. W. MORROW,
Judge Circuit Court of Appeals. [43]

(Return to Writ of Error.)

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the pliant whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

WALTER B. MALING,
Clerk U. S. District Court for the Northern District
of California.

[Endorsed]: No. 16,287. United States District Court for the Northern District of California. Hartland Law, Plaintiff in Error, vs. Arthur L. Smith, et al., Defendants in Error. Writ of Error. Filed Jan. 11, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Due receipt of copy of within admitted this 11th day of January, 1922.

JOHN T. WILLIAMS,
U. S. Atty.,
E. M. LEONARD,
Asst. U. S. Atty.,
Attorneys for Dfts.

Citation on Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Arthur L. Smith, Dam Gate-keeper, A. P. Davis, Chief Engineer and Director, F. G. Hough, Late Project Superintendent, John P. Truesdell, Reclamation Service, Special Assistant to the Attorney General of the United States, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, wherein Hartland Law is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable W. W. MORROW, United States Circuit Judge for the Ninth Circuit of the United States Circuit Court of Appeals, this 10th day of January, A. D. 1922.

WM. W. MORROW,
United States Circuit Judge. [44]

[Endorsed]: No. 16,287. United States District Court for the Northern District of California. Hartland Law, Plaintiff in Error, vs. Arthur L.

Smith, et als., Defendants in Error. Citation on Writ of Error. Filed Jan. 11, 1922. W. B. Mal-
ling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Due receipt of copy of within admitted this 11th
day of January, 1922.

JOHN T. WILLIAMS,
U. S. Atty.,
E. M. LEONARD,
Asst. U. S. Atty.,
Attorneys for Defts.

Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to
the Honorable, the Judges of the Distirct
Court of the United States for the Northern
District of California, GREETING:

BECAUSE, in the record and proceedings, as
also in the rendition of the judgment of a plea
which is in the said District Court, before you, or
some of you, between Eugene D. N. E. Lehe and
Arthur L. Smith, Dam Gate-keeper, A. P. Davis,
Chief Engineer and Director, F. G. Hough, Late
Project Superintendent, John P. Truesdell, Rec-
lamation Service Special Assistant to United States
Attorney General, Defendants in Error, a manifest
error hath happened, to the great damage of the
said Eugene D. N. E. Lehe, plaintiff in error, as
by his complaint appears:

We, being willing that error, if any hath been,

should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, the 10th day of January, in the year of our Lord one thousand nine hundred and twenty-two.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern
District of California.

By J. A. Schaertzer,
Deputy Clerk.

Allowed by

WM. W. MORROW,
Judge Circuit Court of Appeals. [45]

(Return to Writ of Error.)

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

WALTER B. MALING,

Clerk U. S. District Court for the Northern District of California.

[Endorsed]: No. 16,292. United States District Court for the Northern District of California. Eugene D. N. E. Lehe, Plaintiff in Error, vs. Arthur L. Smith et al., Defendants in Error. Writ of Error. Filed Jan. 11, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Due receipt of copy of within admitted this 11th day of January, 1922.

JOHN T. WILLIAMS,

U. S. Atty.,

E. M. LEONARD,

Asst. U. S. Atty.,

Attorneys for Defendants.

Citation on Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Arthur L. Smith, Dam Gate-keeper, A. P. Davis, Chief Engineer, F. G. Hough, Late Project Superintendent, John P. Truesdell, Special Assistant to the Attorney General of the United States Reclamation Service, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, wherein Eugene D. N. Lehe is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable W. W. MORROW, United States Circuit Judge for the Ninth Circuit of the United States Circuit Court of Appeals this 10th day of January, A. D. 1922.

WM. W. MORROW,
United States Circuit Judge. [46]

[Endorsed]: No. 16,292. United States District Court for the Northern District of California. Eugene D. N. E. Lehe, Plaintiff in Error, vs. Arthur L. Smith et al., Defendants in Error. Citation on Writ of Error. Filed Jan. 11, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Due receipt of copy of within admitted this 11th day of January, 1922.

JOHN T. WILLIAMS,
U. S. Atty.

E. M. LEONARD,
Asst. U. S. Atty.,
Attorneys for Defendants.

Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California GREETING:

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Nellie Copland and John D. Copland, Her Husband, Against Arthur L. Smith, Dam Gate-keeper, A. P. Davis, Chief Engineer, F. G. Hough, Late Project Superintendent, John P. Truesdell, Reclamation Service, Special Assistant to United States Attorney General, defendants in error, a manifest error hath happened, to the great damage of the said Nellie Copland and John Doe

Copland, her husband, plaintiffs in error, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, the 10th day of January, in the year of our Lord one thousand nine hundred and twenty-two.

[Seal]

WALTER B. MALING,
Clerk of the United States District Court, Northern
District of California.

By J. A. Schaertzer,
Deputy Clerk.

Allowed by

WM. W. MORROW,
Judge Circuit Court of Appeals. [47]

(Return to Writ of Error.)

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

WALTER B. MALING,
Clerk U.S. District Court for the Northern District
of California.

[Endorsed]: No. 16,293. United States District Court for the Northern District of California. Nellie Copland etc., et al., Plaintiffs in Error, vs. Arthur L. Smith, etc., Defendants in Error. Writ of Error. Filed Jan. 11, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Due receipt of copy of within admitted this 11th day of January, 1922.

JOHN T. WILLIAMS,
U. S. Atty.

E. M. LEONARD,
Asst. U. S. Atty.,
Attorneys for Defendants.

Citation on Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Arthur L. Smith, Dam Gate-keeper, A. P. Davis, Chief Engineer, F. G. Hough, Late Project Superintendent, John P. Truesdell, Special Assistant to the Attorney General of the United States Reclamation Service, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, wherein Nellie Copland and John Doe Copland, Her Husband, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable W. W. MORROW, United States Circuit Judge for the Ninth Circuit of the United States Circuit Court of Appeals, this 10th day of January, A. D. 1922.

WM. W. MORROW,
United States Circuit Judge. [48]

[Endorsed]: No. 16,293. United States District Court for the Northern District of California. Nellie Copland and John Doe Copland, Her Husband, Plaintiffs in Error, vs. Arthur L. Smith et al., etc., Defendants in Error. Citation on Writ of Error. Filed Jan. 11, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Due receipt of copy of within admitted this 11th day of January, 1922.

JOHN T. WILLIAMS,
U. S. Atty.

E. M. LEONARD,
Asst. U. S. Atty.,
Attorneys for Defendants.

[Endorsed]: No. 3850. United States Circuit Court of Appeals for the Ninth Circuit. Hartland Law, Eugene D. N. E. Lehe, Melville W. Lawrence and H. O. Comstock, Copartners, Doing Business as Lawrence & Comstock, Nellie Copland and John Doe Copland, Her Husband, Plaintiffs in Error, vs. Arthur L. Smith, Dam Gate-keeper, A. P. Davis, Chief Engineer and Director, F. G. Hough, Late Project Superintendent, John F. Truesdell, Special Assistant to the Attorney General of the United States Reclamation Service, Defendants in Error. Transcript of Record. Upon Writs of Error to the Southern Division of the United States District

Court of the Northern District of California, Second Division.

Filed March 29, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

CONSOLIDATED CASES.

No. —.

HARTLAND LAW,
Plaintiff and Appellant,
vs.

ARTHUR L. SMITH et als.,
Defendant and Respondent.

EUGENE D. N. E. LEHE,
Plaintiff and Appellant,
vs.

SAME,
Defendants and Respondent.

MELVILLE W. LAWRENCE, etc.
Plaintiffs and Appellant,
vs.

SAME,
Defendants and Respondents.

NELLIE COPLAND, etc.,

Plaintiffs and Appellants,

SAME,

Defendants and Respondents.

Order Extending Time to File Transcript of Record.

Upon motion of John E. Bennett, Esq., and good cause therefor appearing, it is hereby ordered that appellants have thirty days from and after this date in which to prepare and transmit the record on appeal herein from the District Court of the United States to this Court and to file the same.

Dated this 9th day of February, 1922.

WM. W. MORROW,

Judge.

[Endorsed]: No. 3850. In the United States Circuit Court of Appeals for the Ninth Circuit. Hartland Law, Appellant, vs. Arthur L. Smith et als., Respondents. And Other Cases Consolidated. Order Extending Time to File Transcript. Filed Feb. 9, 1922. F. D. Monckton, Clerk. Refiled Mar. 29, 1922. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

CONSOLIDATED CASES — Nos. 16,287, 16,292,
16,285 and 16,293.

HARTLAND LAW,

Separate Plaintiff,

D. N. E. LEHE,

Separate Plaintiff,

MELVILLE W. L. LAWRENCE and H. O. COM-
STOCK, Copartners, Doing Business as
LAWRENCE & COMSTOCK,

Separate Plaintiffs,

NELLIE COPLAND and JOHN DOE COPLAND,
Her Husband,

Separate Plaintiffs,

vs.

ARTHUR L. SMITH, Dam Gate-keeper, A. P.
DAVIS, Chief Engineer and Director, F. G.
HOUGH, Late Project Superintendent,
JOHN F. TRUESDELL, Special Assistant
to the Attorney General, of the United States
Reclamation Service and Related to the
Truckee Carson Project of said Service,
Defendants.

**Order Extending Time to File Transcript of Rec-
ord.**

**EXTENSION OF TIME TO PLAINTIFF IN
ERROR TO PREPARE AND FILE RECORD
ON APPEAL HEREIN.**

Upon motion of John E. Bennett, and good cause

therefor appearing, it is hereby ordered that plaintiffs in error have twenty days from and after the 11th day of March, 1922, in which to prepare and transmit the record on appeal herein from the District Court of the United States to this Court and to file the same.

Dated this 10th day of March, 1922.

W. H. HUNT,
Judge.

[Endorsed]: No. 3850. In the United States Circuit Court of Appeals Ninth Circuit. Hartland Law, Separate Plaintiff et als., vs. Arthur L. Smith, etc., et als., Defendants. Consolidated Cases. Order Extending Time to File Transcript on Appeal. Filed Mar. 10, 1922. F. D. Monckton, Clerk. Re-filed Mar. 29, 1922. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals,
Ninth Circuit.

CONSOLIDATED CASES—Numbered in United States District Court, Southern Division, for the Northern District of California, Nos. 16,-287, 16,292, 16,285, 16,293.

HARTLAND LAW,

Separate Plaintiff,

EUGENE D. N. E. LEHE,

Separate Plaintiff,

MELVILLE W. LAWRENCE and H. O. COM-STOCK, Copartners Doing Business as
LAWRENCE & COMSTOCK,

Separate Plaintiffs,

NELLIE COPLAND and JOHN DOE COPLAND,
Her Husband,

Separate Plaintiff,

vs.

ARTHUR L. SMITH, Dam Gate-keeper, A. P.
DAVIS, Chief Engineer and Director, F. G.
HOUGH, Late Project Superintendent,
JOHN F. TRUESDELL, Special Assistant
to the Attorney General of the United States
Reclamation Service and Related to the
Truckee Carson Project of said Service,
Defendants.

**Affidavit and Order Re Transmission of Records on
Appeal.**

John E. Bennett, being first duly sworn, deposes and says: He is one of the counsel of record in the above-entitled causes: That the said cases were consolidated by order of the United States District Court aforesaid in said court for trial therein, and judgment was had upon nonsuit of plaintiffs against plaintiffs and for defendant, and the same was entered against each and all of the plaintiffs. That the said causes are now on appeal from said District Court to the said Circuit Court of Appeals, and the transcript of the record has been made up in said District Court and transmitted to the said Circuit Court of Appeals in the case of Hartland Law. That the said Law and each of the other plaintiffs are willing and desire that the decision of the said Circuit Court of Appeals which may be made by said Court in the appeal of the said Hartland Law shall be

entered in each of the other of said cases without making up and transmitting the record in each of said cases, or in any other of said cases except the said case of Hartland Law, and that for this purpose the said cases shall be deemed consolidated for hearing in the said United States Circuit Court of Appeals in the same manner in which they stood consolidated in the said District Court. That the question to be settled by the appeal in the said case of Hartland Law is the same question and none other that exists in and relates to each of said other cases.

And further affiant saith not.

JOHN E. BENNETT.

Subscribed and sworn to before me this 29th day of March, 1922.

[Seal]

THEO. FROLICH,

Notary Public in and for the City and County of
San Francisco, State of California.

ORDER.

Upon the foregoing affidavit of John E. Bennett, and upon motion of said John E. Bennett, of counsel for appellant herein, and good cause appearing therefor, it is hereby ordered that transcripts of the records on appeal in each and all of the said cases, except that of Hartland Law, be not made up and transmitted from the said District Court to the said Circuit Court of Appeals, but that the decision of the said United States Circuit Court of Appeals, Ninth Circuit which may hereafter be rendered in said case of Hartland Law, and all rulings and or-

ders of the said Circuit Court of Appeals therein, shall be entered in each of said cases with as full effect as if said transcripts had been made up and transmitted as aforesaid.

WM. W. MORROW,
Judge.

[Endorsed]: No. 3850. In the United States Circuit Court of Appeals, Ninth Circuit. Hartland Law, et als., Separate Plaintiffs, vs. Arthur L. Smith etc., et al. Affidavit and Order Re Transmission of Records on Appeal. Filed Mar. 29, 1922. F. D. Monckton, Clerk.